

1 C. D. Michel – SBN 144258
cmichel@michellawyers.com
2 Joshua R. Dale – SBN 209942
jdale@michellawyers.com
3 Konstadinos T. Moros – SBN 306610
kmoros@michellawyers.com
4 Alexander A. Frank – SBN 311718
afrank@michellawyers.com
5 MICHEL & ASSOCIATES, P.C.
180 E. Ocean Blvd., Suite 200
6 Long Beach, CA 90802
Telephone: (562) 216-4444
7

8 Donald Kilmer-SBN 179986
Law Offices of Donald Kilmer, APC
14085 Silver Ridge Road
9 Caldwell, Idaho 83607
Telephone: (408) 264-8489
10 Email: Don@DKLawOffice.com

11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **SOUTHERN DIVISION**

15 RENO MAY, an individual; ANTHONY
16 MIRANDA, an individual; ERIC HANS,
an individual; GARY BRENNAN, an
individual; OSCAR A. BARRETTO, JR.,
an individual; ISABELLE R.
17 BARRETTO, an individual; BARRY
18 BAHRAMI, an individual; PETE
19 STEPHENSON, an individual; ANDREW
HARMS, an individual; JOSE FLORES,
an individual; DR. SHELDON HOUGH,
20 DDS, an individual; SECOND
AMENDMENT FOUNDATION; GUN
21 OWNERS OF AMERICA; GUN
OWNERS FOUNDATION; GUN
22 OWNERS OF CALIFORNIA, INC.; THE
LIBERAL GUN CLUB, INC.; and
23 CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED,
24

Plaintiffs,

v.

26 ROBERT BONTA, in his official capacity
as Attorney General of the State of
27 California, and DOES 1-10,

Defendants.

Case No.: 8:23-cv-01696 CJC (ADSx)

**EVIDENTIARY OBJECTIONS OF
PLAINTIFFS TO DECLARATION
OF DR. BRENNAN RIVAS FILED
IN SUPPORT OF DEFENDANT'S
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: December 20, 2023
Hearing Time: 1:30 p.m.
Courtroom: 9 B
Judge: Hon. Cormac J. Carney

TO THIS HONORABLE COURT:

Plaintiffs Reno May, Anthony Miranda, Eric Hans, Gary Brennan, Oscar A. Barretto, Jr., Isabelle R. Barretto, Barry Bahrami, Pete Stephenson, Andrew Harms, Jose Flores, Dr. Sheldon Hough, DDS, The Second Amendment Foundation, Gun Inc., and California Rifle & Pistol Association, Incorporated, hereby jointly object, pursuant to Fed. R. Evid. 401, 402, 403, 601, 702, 703, and 704 to the Declaration of Dr. Brennan Rivas, lodged by Defendant in support of his Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction. These objections are raised on the following grounds and as to the following matters contained within the declaration:

1. Objection to Paragraphs 15-22:

Relevance. The history of the growth of a single city—Philadelphia—is not relevant to whether historical analogues regulating firearms existed. This lack of relevance is evidenced by lack of mention of laws relating to carrying of firearms in Philadelphia other than a single Colonial era law about not carrying “unlawful” weapons in the built part of the city. *See New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111, 2133 (Colonial laws), 2143 (outliers), and 2153 (outliers) (2022). And no explanation was provided about the breadth of this lone law, whether it applied to firearms as “unlawful” weapons, or anything that would inform the court about the state of historical firearms laws at the Founding up through Reconstruction even in the one city discussed.

2. Objection to Paragraphs 23-33:

Relevance. The history of buildings in Philadelphia, absent any discussion of firearms laws or regulations governing those buildings, is not relevant to the evidence of Founding through Reconstruction historical analogues that governments must produce to show a history and tradition of firearms regulation.

3. Objection to Paragraph 34:

Relevance. Laws about militias and taverns unrelated to the use or possession of firearms, and which were inapplicable to the general citizenry in the

same taverns, are not relevant to the evidence of Founding through Reconstruction historical analogues that governments must produce to show a history and tradition of firearms regulation. Citations to an outlier example is not relevant to the evidence of Founding through Reconstruction historical analogues that governments must produce to show a history and tradition of firearms regulation. *See Bruen* at 2133, 2153.

4. Objection to Paragraph 36:

Foundation. There is no citation to facts or sources provided to support the opinion expressed by the declarant that “By the Civil War Era, the carrying of concealed weapons was more common than it had been in the eighteenth century, and pocket-sized pistols were more readily available to consumers.”

5. Objection to Paragraphs 40-41:

Relevance. Historical concealed carry prohibitions are not relevant to the sensitive places analysis. The Supreme Court has already determined that carry cannot be fully prohibited under the Second Amendment. *See Bruen, passim*.

6. Objection to Paragraphs 47-53:

Relevance/Improper Expert Opinion. The declarant makes legal argument and opines on legal questions that are for the trier of fact to decide and not a proper subject of expert opinion.

7. Objection to Paragraph 55:

Relevance/Foundation. There is no citation to facts or sources provided to support the opinion expressed by the declarant that there are analogue local ordinances supporting sensitive space restrictions, and the declarant admits he’s speculating about what local ordinances might or might not exist.

8. Objection to Paragraph 56:

Foundation. There is no citation to facts or sources provided to support the opinions expressed by the declarant other than the declarant’s own publication, the bases and sources for that publication are not cited or attached, and no other

1 information is provided by the declarant to support the origin of or veracity of the
2 declarant's opinion.

3 **9. Objection to Paragraph 57:**

4 Foundation. There is no citation or insufficient citations to facts or sources
5 provided to support the opinion expressed by the declarant, and no other
6 information is provided by the declarant to support the origin of or veracity of the
7 declarant's opinion.

8 **10. Objection to Paragraph 59:**

9 Foundation. There is no citation to facts or sources provided to support the
10 opinion expressed by the declarant that "These are only a small sample of the
11 travel-related cases that formed the corpus of traveler-exception jurisprudence
12 associated with nineteenth century concealed weapon laws." No other information
13 is provided by the declarant to support the origin of or veracity of the declarant's
14 opinion.

15 **11. Objection to Paragraph 60:**

16 Relevance/Improper Expert Opinion. The declarant makes legal argument
17 and opines on legal questions that are for the trier of fact to decide and not a proper
18 subject of expert opinion.

19 **12. Objection to Paragraph 61:**

20 Relevance/Improper Expert Opinion. The declarant makes legal argument
21 and opines on legal questions that are for the trier of fact to decide and not a proper
22 subject of expert opinion.

23 Relevance. A Post-Reconstruction era example of a firearms regulation is
24 manifestly not relevant to the evidence of Founding through Reconstruction
25 historical analogues that governments must produce to show a history and tradition
26 of firearms regulation. *Bruen* at 2153-54.

27 **13. Objection to Paragraph 62:**

28 Foundation. There is no citation or insufficient citations to facts or sources

1 provided to support the opinion expressed by the declarant, and no other
2 information is provided by the declarant to support the origin of or veracity of the
3 declarant's opinion.

4 Relevance. Post-Reconstruction firearms regulations are manifestly not
5 relevant to the evidence of Founding through Reconstruction historical analogues
6 that governments must produce to show a history and tradition of firearms
7 regulation. *Bruen* at 2153-54.

8 **14. Objection to Paragraph 65:**

9 Foundation. There is no citation or insufficient citations to facts or sources
10 provided to support the numerous opinions expressed by the declarant regarding the
11 history of transportation, and no other information is provided by the declarant to
12 support the origin of or veracity of the declarant's opinion.

13 Relevance. The history of pre-and-post-Reconstruction era crime in the
14 North and the South, absent a discussion of or citation to firearms regulations
15 regarding such crime, is not relevant to the evidence of Founding through
16 Reconstruction historical analogues that governments must produce to show a
17 history and tradition of firearms regulation.

18 **15. Objection to Paragraph 67:**

19 Foundation. There is no citation provided to support the numerous
20 opinions expressed by the declarant regarding the purported private railroad
21 policies regarding carrying of firearms. The lack of citation to or identification of
22 the policies denies the court the ability to assess the reliability of the representations
23 about the policies. The lack of foundation for the alleged policies also denies the
24 court the ability to assess when these policies, even if they are accurately
25 represented, were adopted in relation to the relevant analogical time period. And no
26 other information is provided by the declarant to support the origin of or veracity of
27 the declarant's opinion.

28 Relevance. The purported history of private carrier rules about carry is not

1 relevant evidence of Founding through Reconstruction government restrictions on
2 the self-defense right that governments must produce to show a history and
3 tradition of firearms regulation. Although it cannot be determined how many
4 railroad carriers enforced rules against carry due to the lack of foundation for the
5 declarant's opinion, if the declarant is relying upon only a few such rules, outlier
6 examples would not be relevant to show a history and tradition of firearms
7 regulation.

8 **16. Objection to Paragraph 68:**

9 Foundation. There is no citation to facts or sources provided to support the
10 opinion expressed by the declarant that "included within this power of conductors
11 to police aboard their trains was a responsibility to enforce weapon regulations in
12 effect at the time." No other information is provided by the declarant to support the
13 origin of or veracity of the declarant's opinion.

14 **17. Objection to Paragraph 69:**

15 Relevance. Whether railroad police were armed or exercised quasi-police
16 authority on certain carriers is not relevant to the evidence of Founding through
17 Reconstruction historical analogues that governments must produce to show a
18 history and tradition of firearms regulation.

19 **18. Objection to Paragraph 70:**

20 Relevance. Whether railroad police were armed or exercised quasi-police
21 authority on certain carriers is not relevant to the evidence of Founding through
22 Reconstruction historical analogues that governments must produce to show a
23 history and tradition of firearms regulation. Early 20th century firearms regulations
24 are manifestly not relevant to the evidence of Founding through Reconstruction
25 historical analogues that governments must produce to show a history and tradition
26 of firearms regulation.

27 Relevance/Improper Expert Opinion. The declarant makes legal argument
28 and opines on legal questions regarding the effect of court decisions that are for the

1 trier of fact to interpret and decide and not a proper subject of expert opinion.

2 **19. Objection to Paragraph 75:**

3 Foundation. There is no citation to facts or sources provided to support the
4 opinion expressed by the declarant regarding what was contained in local records,
5 the roles of local law enforcement, or the laws and customs they did or did not
6 enforce. No other information is provided by the declarant to support the origin of
7 or veracity of the declarant's opinion.

8 **20. Objection to Paragraph 76:**

9 Foundation and Relevance.

10 76-1: Relevance. No relevance of the availability of intracity transportation
11 in early Philadelphia to the evidence of Founding through Reconstruction
12 government restrictions on the self-defense right that governments must produce to
13 show a history and tradition of firearms regulation.

14 76-2: Relevance. No relevance of the lack of public spaces in early
15 Philadelphia to the evidence of Founding through Reconstruction government
16 restrictions on the self-defense right that governments must produce to show a
17 history and tradition of firearms regulation.

18 76-3: Foundation. There is no citation to facts or sources provided to
19 support the broad conclusions the declarant alleges she is summing up, and the
20 prior paragraphs provide little to no citation to a history or tradition of such
21 regulations or laws to support her broad conclusions.

22 76-4: Foundation. There is no citation to facts or sources provided to
23 support the broad conclusions the declarant alleges she is summing up, and the
24 prior paragraphs provide little to no citation to a history or tradition of such
25 regulations or laws to support her broad conclusions.

26 76-5: Foundation. There is no citation to facts or sources provided to
27 support the broad conclusions the declarant alleges she is summing up, and the
28 prior paragraphs provide little to no citation to a history or tradition of such

1 regulations or laws to support her broad conclusions.

2 76-6: Foundation. There is no citation to facts or sources provided to
3 support the broad conclusions the declarant alleges she is summing up, and the
4 prior paragraphs provide little to no citation to a history or tradition of such
5 regulations or laws to support her broad conclusions.

6 76-7: Foundation and Relevance. There is no citation to facts or sources,
7 either in the paragraph or previously, provided to support the broad conclusions the
8 declarant alleges regarding her inability to gather sources to support her
9 conclusions. There is also no citation to facts or sources, either in the paragraph or
10 previously, which support the declarant's suppositions about a history and tradition
11 of firearms regulation based on what the declarant admits is an incomplete record
12 and which, when supported by any citation, are based on citations to outliers. The
13 declarant's inability to identify and cite to historical analogues of the firearms
14 regulations contained within SB 2 is also not relevant to the issue of the state's
15 burden to have identified a rich analogical tradition of firearms regulation prior to
16 passing SB 2.

17 **21. Objection to Paragraph 77 (mislabeled 82):**

18 Foundation. There is no citation to facts or sources provided to support the
19 broad conclusions the declarant alleges she is summing up, and the prior paragraphs
20 provide scant citation to a history or tradition of such regulations or laws to support
21 her broad conclusions.

22 Relevance. The declarant's inability to identify and cite to historical
23 analogues of the firearms regulations contained within SB 2 is not relevant to the
24 issue of the state's burden to have identified a rich analogical tradition of firearms
25 regulation prior to passing SB 2.

26 For the reasons set forth above, the court should strike or disregard the
27 declaration in its entirety in ruling on Plaintiffs' motion, or, in the alternative, strike
28 and disregard those identified opinions.

1 Dated: November 20, 2023

MICHEL & ASSOCIATES, P.C.

/s/ C.D. Michel

C.D. Michel

Counsel for Plaintiffs

5 Dated: November 20, 2023

LAW OFFICES OF DON KILMER

/s/ Don Kilmer

Don Kilmer

Counsel for Plaintiff The Second Amendment
Foundation

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CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *May, et al. v. Bonta*
Case No.: 8:23-cv-01696 CJC (ADSx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**EVIDENTIARY OBJECTIONS OF PLAINTIFFS TO DECLARATION OF
DR. BRENNAN RIVAS FILED IN SUPPORT OF DEFENDANT'S
OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Robert L. Meyerhoff, Deputy Attorney General
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Email: Robert.Meyerhoff@doj.ca.gov
Attorney for Defendant

I declare under penalty of perjury that the foregoing is true and correct.

Executed November 20, 2023.

Christina Castron